

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT I. SAWYER,

Plaintiff,

vs.

**5:20-CV-783
(TJM/ML)**

COUNTY OF JEFFERSON,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Miroslav Lovric for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). On December 3, 2020, the Court adopted an earlier Report-Recommendation from Magistrate Judge Lovric and dismissed Plaintiff's original Complaint with leave to replead. See dkt. # 7. Plaintiff had already filed an Amended Complaint, and the Court referred that pleading to Judge Lovric for initial review. Id. Plaintiff's Amended Complaint, like his original Complaint, alleges that the Defendant County of Jefferson violated his constitutional rights in charging him with robbery and other crimes when the officials who charged him knew that the testimony they presented to the Grand Jury and in court proceedings was false. He claims that conduct violated his rights under the United States constitution and under New York law.

Magistrate Judge Lovric's Report-Recommendation, dkt. # 9, issued on January 4, 2021, finds that Plaintiff has failed to state a claim upon which relief could be granted. Plaintiff, he finds, has failed to allege that the constitutional violations were caused by a municipal policy and custom. Without such an allegation, Plaintiff cannot make out a claim against Defendant County of Jefferson. Plaintiff's Amended Complaint alleges only that his injuries were caused by prosecutorial decisions. Magistrate Judge Lovric finds that the law in this Circuit is that prosecutorial decisions do not constitute a municipal policy or custom that could expose a county to liability pursuant to Monell v. New York City Dep't of Social Services, 436 U.S. 658, 694 (1978). Since the Court has already afforded Plaintiff an opportunity to amend his Complaint and he has still not stated a claim upon which relief could be granted, Magistrate Judge Lovric recommends that the Court dismiss the case with prejudice.

Plaintiff did not object to the Report-Recommendation, and the time for such objections has passed.¹ After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

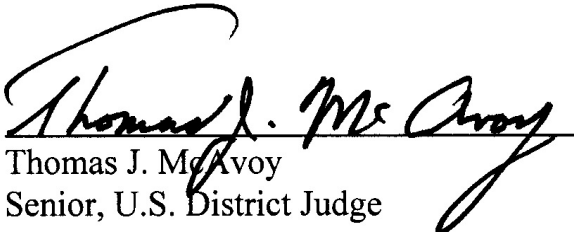
Accordingly,

¹Magistrate Judge Lovric concluded that Plaintiff attempts to raise claims under N.Y. Penal Law § 10.00 and N.Y. Crim. Proc. Law § 210.20. While the Court doubts that Plaintiff could make out any claim under those statutes, having dismissed any federal claims that Plaintiff attempts to raise, the Court declines to exercise supplemental jurisdiction over any state-law claims. See 28 U.S.C. § 1367(c)(3) (a district court "may decline to exercise supplemental jurisdiction over a claim" when the "court has dismissed all claims over which it has original jurisdiction.").

The Report-Recommendation of Magistrate Judge Lovric, dkt. #9, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's Complaint is hereby **DISMISSED** with prejudice to Plaintiff pleading any federal claims.

IT IS SO ORDERED.

Dated: February 2, 2021


Thomas J. McAvoy
Senior, U.S. District Judge